

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL HOWARD HUNTER,

Plaintiff,

v.

KENNETH ALDRIDGE, *et al.*,

Defendants.

No. C90-0616C

ORDER

This matter comes before the Court under Local General Rule 8(c). Plaintiff has filed a “Motion to Vacate, for Leave to Amend and to Treat this Action as a Petition for Writ of Habeas Corpus and for Recusal of John C. Coughenour and Appoint Counsel.” Dkt. 9. The Honorable John C. Coughenour, United States District Judge, declined to recuse himself voluntarily and that portion of plaintiff’s motion was referred to the Chief Judge for review. Dkt. # 13. Plaintiff’s motion is therefore ripe for review by this Court.

Section 455 of title 28 of the United States Code governs the disqualification of a district judge. It states in relevant part: “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge

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1 shall proceed no further therein, but another judge shall be assigned to hear such
2 proceeding. The affidavit shall state the facts and the reasons for the belief that
3 bias or prejudice exists.

4 A judge must recuse himself if a reasonable person would believe that he is unable to be
5 impartial. Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir. 1993). This is an
6 objective inquiry regarding whether there is an appearance of bias, not whether there is bias in
7 fact. Preston v. United States, 923 F.2d 731, 734 (9th Cir. 1992); United States v. Conforte, 624
8 F.2d 869, 881 (9th Cir. 1980); See also In Liteky v. United States, 510 U.S. 540 (1994)
9 (explaining the narrow bases for recusal).

10 A litigant may not, however, use the recusal process to remove a judge based on
11 adverse rulings in the pending case: the alleged bias must result from an extrajudicial source.
12 United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986).¹ Plaintiff argues that certain orders
13 issued by Judge Coughenour, including an alleged “ex parte special order” transferring plaintiff
14 from the City of Kent jail and the bar order issued on May 25, 1990, show that he has a bias
15 against plaintiff and/or plaintiff’s freedom of speech. Plaintiff does not identify any
16 extrajudicial source of the alleged prejudice: the only evidence of bias presented is the judge’s
17 earlier decisions. In such circumstances, the risk that the litigant is using the recusal motions for
18 strategic purposes is considerable. See Ex Parte American Steel Barrel Co. and Seaman, 230
19 U.S. 35, 44 (1913). Because a judge’s conduct in the context of judicial proceedings does not
20 constitute the requisite bias under 28 U.S.C. § 144 or § 455 if it is prompted solely by
21 information that the judge received in the context of the performance of his duties as the
22 presiding judicial officer, plaintiff has not met his burden of showing an appearance of bias.

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¹ Objections to a judge’s decisions are properly raised through an appeal, not a motion to recuse.

Having reviewed plaintiff's motion and the remainder of the record, the Court finds that Judge Coughenour's impartiality cannot reasonably be questioned. There being no evidence of bias or prejudice, plaintiff's request to remove Judge Coughenour from this matter is DENIED.

DATED this 25th day of October, 2005.

Mr S Casnik

Robert S. Lasnik
Chief Judge, United States District Court